

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1034 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

NAYANKUMAR KANTILAL SHAH
versus
SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT (APPEALS)

Appearance:

Shri N.K.Pahwa, Advocate, for Shri P.M.Thakkar, Advocate, for the Petitioner.

Shri A.G.Uraizee, Assistant Government Pleader, for Respondent No.1.

Respondent No.2 served.

CORAM : MR.JUSTICE A.N.DIVECHA
Date of decision: 30/08/96

ORAL JUDGEMENT

The order passed by the Secretary to the Government of Gujarat (Appeals), Revenue Department at

Ahmedabad (respondent No.1 herein) on behalf of the State Government on 26th August 1985 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 set aside the order passed by and on behalf of the Taluka Panchayat at Vanthali District Junagadh (respondent No.2 herein) on 28th May 1984. By its aforesaid order, respondent No.2 granted what is popularly known as the N.A.Permission with respect to one parcel of land bearing survey No.120 admeasuring 1 acre 01 guntha situated at village Koyali taluka Vanthali (the disputed land for convenience).

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that respondent No.2 granted the N.A.Permission with respect to the disputed land on certain terms and conditions by its order passed on 28th May 1984. Its copy is at Annexure-A to this petition. It appears to have come to the notice of respondent No.1 herein. He appears to have found it not according to law. Its suo motu revision under Section 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) was therefore contemplated. A show cause notice thereupon came to be issued on 28th January 1985 calling upon the petitioner to show cause why the order at Annexure-A to this petition should not be revised. After hearing the petitioner, by his order passed on 26th August 1985, respondent No.1 set aside the order at Annexure-A to this petition. Its copy is at Annexure-B to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning its correctness.

3. This petition can be disposed of on the short ground of belated action under Section 211 of the Code in the light of the binding ruling of the Supreme Court in the case of STATE OF GUJARAT v. PATEL RAGHAV NATHA reported in (1969) 10 Gujarat Law Reporter at page 992. It has been held therein that revisional powers under Section 211 of the Code qua the N.A.Permission have to be exercised within the reasonable period of three months.

4. In the present case, the N.A.Permission was granted on 28th May 1984 by the order at Annexure-A to this petition. The show cause notice for its revision under Section 211 of the Code was admittedly issued on 28th January 1985, that is, about eight months after the order at Annexure-A to this petition. Exercise of revisional powers qua the order at Annexure-A to this petition beyond the reasonable period of three months in view of the aforesaid Supreme Court ruling would be

incompetent. The impugned order at Annexure-B to this petition deserves to be quashed and set aside on this ground alone.

5. Learned Assistant Government Pleader Shri Uraizee for respondent No.1 has however urged that the petitioner is guilty of making construction in contravention of the Ribbon Development Rules as found by respondent No.1 in his impugned order at Annexure-B to this petition. It may be mentioned at this stage that, while issuing Rule at the time of preliminary hearing of this petition on 28th March 1986, this court granted the ad-interim relief in view of the statement made by learned Advocate Shri Thakkar for the petitioner to the effect that the petitioner would remove the construction which is in violation of the Ribbon Development Rules within one month from the date of intimation by the concerned Executive Engineer. Learned Advocate Shri Pahwa for the petitioner states at the Bar on instructions that the offending construction has already been removed. In that view of the matter, there remains no serious objection to grant of the N.A.Permission by the order at Annexure-A to this petition.

6. In the result, this petition is accepted. The order passed by the Secretary to the Government of Gujarat (Appeals), Revenue Department at Ahmedabad on 26th August 1985 at Annexure-B to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.

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